

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

Agenda E-19 (Appendix B)
Rules
September 2006

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**TO: Honorable David F. Levi, Chair
Standing Committee on Rules of Practice
and Procedure**

**FROM: Honorable Thomas S. Zilly, Chair
Advisory Committee on Bankruptcy Rules**

DATE: May 24, 2006 (Revised June 30, 2006)

RE: Report of the Advisory Committee on Bankruptcy Rules

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 8-10, 2006, in Chapel Hill, North Carolina. As a result of that meeting and other actions, the Advisory Committee recommends a series of Action Items to the Standing Committee. First, the Committee recommends that the Standing Committee finally approve and recommend to the Judicial Conference the rules set out in Part II.A.3 of this report.

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The Advisory Committee considered public comments regarding the proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Rules 6003, 9005.1, and 9037 that were published in August 2005. The Advisory Committee received a number of comments on the proposed amendments to the Rules, and the comments are summarized later in this report. Since no person who submitted a written comment requested to appear at the public hearing scheduled for January 9, 2006, the hearing was canceled. The Advisory Committee recommends that the proposed amendments and additions to the Bankruptcy Rules set out in Part II.A.3 be approved for transmittal to the Judicial Conference.

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II. ACTION ITEMS

- A. Proposed Amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1, and new Rules 6003, 9005.1, and 9037 Submitted for Final Approval by the Standing Committee and Submission to the Judicial Conference.

The Advisory Committee on Bankruptcy Rules recommends that the Standing Committee approve the following amendments and new rules for submission to the Judicial Conference.

1. *Public Comment and Hearing.*

The proposed amendments to Bankruptcy Rules 1014, 3007, 4001, 6006, and 7007.1 and new Rules 6003, 9005.1, and 9037 were published for comment in August 2005. A public hearing on the proposed amendments was scheduled for January 9, 2006, but there were no requests to appear at the hearing.

2. *Synopsis of Proposed Amendments.*

- (a) Rule 1014 is amended to state explicitly that the court can order the change of venue of a case on its own motion.
- (b) Rule 3007 is amended to prohibit a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. The rule is also amended to allow omnibus claims objections which can include up to 100 claims in a single filed objection to claims. The rule limits the nature of objections that may be joined in the single filing, and it also establishes minimum standards that are intended to ensure the protection of the due process rights of the claimants.
- (c) Rule 4001 is amended to require movants seeking approval of agreements relating to the automatic stay, approval of certain other agreements, or authority to use cash collateral or obtain credit submit along with the motion a proposed order for the relief requested and to provide more extensive notice to parties in interest of the requested relief. The rule requires the movant to include within the motion a statement not to exceed five pages that concisely describes the material provisions of the relief requested.
- (d) Rule 6003 is new. It sets limits on the granting of certain relief by the court during the first 20 days of a case. Absent a need to avoid immediate and irreparable harm, the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume or assign executory contracts and unexpired leases for the first 20 days of the case.

- (e) Rule 6006 is amended to authorize omnibus motions to reject executory contracts and unexpired leases. It also authorizes omnibus motions to assume or assign multiple executory contracts and unexpired leases under specific circumstances. The rule establishes minimum standards that are intended to ensure the protection of the due process rights of the claimants.
- (f) Rule 7007.1 is amended to provide that a party must file its corporate ownership statement with the first paper filed with the court in an adversary proceeding.
- (g) Rule 9005.1 is new. It makes Rule 5.1 F. R. Civ. P. applicable to all contested matters and other proceedings within the bankruptcy case.
- (h) Rule 9037 is new. It is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Consistent with amendments to the Federal Rules of Appellate, Civil and Criminal Procedure, this rule protects the privacy and security concerns that arise from the filing of documents, both electronically and in paper form, with the court.

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3. *Text of Proposed Amendments to Rules 1014, 3007, 4001, 6003, 6006, 7007.1, 9005.1 and 9037.*

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES BANKRUPTCY PROCEDURE***

Rule 1014. Dismissal and Change of Venue

1 (a) DISMISSAL AND TRANSFER OF CASES.

2 (1) *Cases Filed in Proper District.*

3 If a petition is filed in the proper district, the court, on the
4 timely motion of a party in interest or on its own motion, and
5 after hearing on notice to the petitioners, the United States
6 trustee, and other entities as directed by the court, may
7 transfer the case ~~may be transferred~~ to any other district if the
8 court determines that the transfer is in the interest of justice or
9 for the convenience of the parties.

10 (2) *Cases Filed in Improper District.*

11 If a petition is filed in an improper district, the court, on
12 the timely motion of a party in interest or on its own motion,

*New material is underlined; matter to be omitted is lined through.

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13 and after hearing on notice to the petitioners, the United
14 States trustee, and other entities as directed by the court, may
15 dismiss the case or transfer it ~~the case may be dismissed or~~
16 ~~transferred~~ to any other district if the court determines that
17 transfer is in the interest of justice or for the convenience of
18 the parties.

19 * * * * *

COMMITTEE NOTE

Courts have generally held that they have the authority to dismiss or transfer cases on their own motion. The amendment recognizes this authority and also provides that dismissal or transfer of the case may take place only after notice and a hearing.

Other amendments are stylistic.

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Changes Made After Publication:

No changes since publication.

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Rule 3007. Objections to Claims

1 (a) OBJECTIONS TO CLAIMS. An objection to the
2 allowance of a claim shall be in writing and filed. A copy of
3 the objection with notice of the hearing thereon shall be
4 mailed or otherwise delivered to the claimant, the debtor or
5 debtor in possession, and the trustee at least 30 days prior to
6 the hearing. ~~If an objection to a claim is joined with a~~
7 ~~demand for relief of the kind specified in Rule 7001, it~~
8 ~~becomes an adversary proceeding.~~

9 (b) DEMAND FOR RELIEF REQUIRING AN
10 ADVERSARY PROCEEDING. A party in interest shall not
11 include a demand for relief of a kind specified in Rule 7001
12 in an objection to the allowance of a claim, but may include
13 the objection in an adversary proceeding.

14 (c) LIMITATION ON JOINDER OF CLAIMS
15 OBJECTIONS. Unless otherwise ordered by the court or

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16 permitted by subdivision (d), objections to more than one
17 claim shall not be joined in a single objection.

18 (d) OMNIBUS OBJECTION. Subject to subdivision (e),
19 objections to more than one claim may be joined in an
20 omnibus objection if all the claims were filed by the same
21 entity, or the objections are based solely on the grounds that
22 the claims should be disallowed, in whole or in part, because:

23 (1) they duplicate other claims;

24 (2) they have been filed in the wrong case;

25 (3) they have been amended by subsequently filed
26 proofs of claim;

27 (4) they were not timely filed;

28 (5) they have been satisfied or released during the
29 case in accordance with the Code, applicable rules, or a court
30 order;

31 (6) they were presented in a form that does not
32 comply with applicable rules, and the objection states that the

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33 objector is unable to determine the validity of the claim
34 because of the noncompliance;

35 (7) they are interests, rather than claims; or

36 (8) they assert priority in an amount that exceeds the
37 maximum amount under § 507 of the Code.

38 (e) REQUIREMENTS FOR OMNIBUS OBJECTION.

39 An omnibus objection shall:

40 (1) state in a conspicuous place that claimants
41 receiving the objection should locate their names and claims
42 in the objection;

43 (2) list claimants alphabetically, provide a cross-
44 reference to claim numbers, and, if appropriate, list claimants
45 by category of claims;

46 (3) state the grounds of the objection to each claim
47 and provide a cross-reference to the pages in the omnibus
48 objection pertinent to the stated grounds;

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- 49 (4) state in the title the identity of the objector and the
50 grounds for the objections;
- 51 (5) be numbered consecutively with other omnibus
52 objections filed by the same objector; and
- 53 (6) contain objections to no more than 100 claims.
- 54 (f) FINALITY OF OBJECTION. The finality of any
55 order regarding a claim objection included in an omnibus
56 objection shall be determined as though the claim had been
57 subject to an individual objection.

COMMITTEE NOTE

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint, which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of a kind specified in Rule 7001.

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The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present a significant opportunity for the efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were filed by the same entity, or if the objections are based solely on the grounds set out in subdivision (d) of the rule. Objections of the type listed in subdivision (d) often can be resolved without material factual or legal disputes. Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e). Among those requirements is the requirement in subdivision (e)(5) that these omnibus objections be consecutively numbered. Since these objections may not join more than 100 objections in any one omnibus objection, there may be a need for several omnibus objections to be filed in a particular case. Consecutive numbering of each omnibus objection and the identification of the objector in the title of the objection is essential to keep track of the objections on the court's docket. For example, the objections could be titled Debtor in Possession's First Omnibus Objection to Claims, Debtor in Possession's Second Omnibus Objection to Claims, Creditors' Committee's First Omnibus Objection to Claims, and so on. Titling the objections in this manner

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should avoid confusion and aid in tracking the objections on the docket.

Subdivision (f) provides that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment. Moreover, use of an omnibus objection generally does not preclude the objecting party from raising a subsequent objection to the claim on other grounds. See Restatement (Second) of Judgments § 26(1)(d) (1982) (generally applicable rule barring multiple actions based on same transaction or series of transactions is overridden when a statutory scheme permits splitting of claims).

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Changes Made After Publication:

There were several changes made to the rule after its publication. The Advisory Committee declined to follow Mr. Sabino's suggestion, concluding that the rule as proposed includes sufficient flexibility, and that expanding the flexibility might lead to excessive deviation from the appropriate format for omnibus claims objections. The Advisory Committee also declined to follow Mr. Horsley's suggestion because the deadline for filing a proof of claim varies based on the nature of the creditor (governmental units have

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different deadlines from other creditors) as well as on the chapter under which the case is pending. The Advisory Committee rejected Judge Grant's suggestion that a party proposing an omnibus claims objection be required to demonstrate some special cause to allow the joinder of the objections. The Advisory Committee concluded that the rule includes sufficient protections for claimants such that omnibus objections should be allowed without the need for a special showing by the claims objector that joinder is proper.

The Advisory Committee did accept several of Judge Grant's suggestions, and the rule was amended by deleting the grounds for objection to claims based on the filing of a superceding proof of claim under proposed subdivision (d)(3) and the transfer of claims under proposed subdivision (d)(4). Subdivision (d)(3) now permits objections to claims that have been amended by a subsequently filed proof of claim and the paragraphs within subdivision (d) have been renumbered to reflect the deletion. The Committee Note also no longer includes any reliance on § 502 (j) for the statement indicating that a subsequent claim objection can be filed to a claim that was previously included in an omnibus claim objection.

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

1

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2

(b) USE OF CASH COLLATERAL.

3

(1) *Motion; Service.*

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4 (A) Motion. A motion for ~~authorization~~ authority
5 to use cash collateral shall be made in accordance with Rule
6 9014 and shall be accompanied by a proposed form of order
7 ~~served on any entity which has an interest in the cash~~
8 ~~collateral, on any committee elected pursuant to § 705 or~~
9 ~~appointed pursuant to § 1102 of the Code or its authorized~~
10 ~~agent, or, if the case is a chapter 9 municipality case or a~~
11 ~~chapter 11 reorganization case and no committee of unsecured~~
12 ~~creditors has been appointed pursuant to § 1102, on the~~
13 ~~creditors included on the list filed pursuant to Rule 1007(d),~~
14 ~~and on such other entities as the court may direct.~~

15 (B) Contents. The motion shall consist of or (if
16 the motion is more than five pages in length) begin with a
17 concise statement of the relief requested, not to exceed five
18 pages, that lists or summarizes, and sets out the location
19 within the relevant documents of, all material provisions,
20 including:

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21 (1) the name of each entity with an interest in
22 the cash collateral;

23 (2) the purposes for the use of the cash
24 collateral;

25 (3) the material terms, including duration, of
26 the use of the cash collateral; and

27 (4) any liens, cash payments, or other
28 adequate protection that will be provided to each entity with
29 an interest in the cash collateral or, if no additional adequate
30 protection is proposed, an explanation of why each entity's
31 interest is adequately protected.

32 (C) Service. The motion shall be served on:

33 (1) any entity with an interest in the cash collateral; (2) any
34 committee elected under § 705 or appointed under § 1102 of
35 the Code, or its authorized agent, or, if the case is a chapter 9
36 municipality case or a chapter 11 reorganization case and no
37 committee of unsecured creditors has been appointed under

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38 § 1102, the creditors included on the list filed under Rule
39 1007(d); and (3) any other entity that the court directs.

40 * * * * *

41 (c) OBTAINING CREDIT.

42 (1) *Motion; Service.*

43 (A) Motion. A motion for authority to obtain
44 credit shall be made in accordance with Rule 9014 and shall
45 be accompanied by a copy of the credit agreement and a
46 proposed form of order served on any committee elected
47 pursuant to § 705 or appointed pursuant to § 1102 of the Code
48 ~~or its authorized agent, or, if the case is a chapter 9~~
49 ~~municipality case or a chapter 11 reorganization case and no~~
50 ~~committee of unsecured creditors has been appointed pursuant~~
51 ~~to § 1102, on the creditors included on the list filed pursuant~~
52 ~~to Rule 1007(d), and on such other entities as the court may~~
53 ~~direct. The motion shall be accompanied by a copy of the~~
54 ~~agreement .~~

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55 (B) Contents. The motion shall consist of or (if
56 the motion is more than five pages in length) begin with a
57 concise statement of the relief requested, not to exceed five
58 pages, that lists or summarizes, and sets out the location
59 within the relevant documents of, all material provisions of
60 the proposed credit agreement and form of order, including
61 interest rate, maturity, events of default, liens, borrowing
62 limits, and borrowing conditions. If the proposed credit
63 agreement or form of order includes any of the provisions
64 listed below, the concise statement shall also: briefly list or
65 summarize each one; identify its specific location in the
66 proposed agreement and form of order; and identify any such
67 provision that is proposed to remain in effect if interim
68 approval is granted, but final relief is denied, as provided
69 under Rule 4001(c)(2). In addition, the motion shall describe
70 the nature and extent of each provision listed below:

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71 (1) a grant of priority or a lien on property of
72 the estate under § 364(c) or (d);

73 (2) the providing of adequate protection or
74 priority for a claim that arose before the commencement of
75 the case, including the granting of a lien on property of the
76 estate to secure the claim, or the use of property of the estate
77 or credit obtained under § 364 to make cash payments on
78 account of the claim;

79 (3) a determination of the validity,
80 enforceability, priority, or amount of a claim that arose before
81 the commencement of the case, or of any lien securing the
82 claim;

83 (4) a waiver or modification of Code
84 provisions or applicable rules relating to the automatic stay;

85 (5) a waiver or modification of any entity's
86 authority or right to file a plan, seek an extension of time in
87 which the debtor has the exclusive right to file a plan, request

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88 the use of cash collateral under § 363(c), or request authority
89 to obtain credit under § 364;

90 (6) the establishment of deadlines for filing a
91 plan of reorganization, for approval of a disclosure statement,
92 for a hearing on confirmation, or for entry of a confirmation
93 order;

94 (7) a waiver or modification of the
95 applicability of nonbankruptcy law relating to the perfection
96 of a lien on property of the estate, or on the foreclosure or
97 other enforcement of the lien;

98 (8) a release, waiver, or limitation on any
99 claim or other cause of action belonging to the estate or the
100 trustee, including any modification of the statute of
101 limitations or other deadline to commence an action;

102 (9) the indemnification of any entity;

103 (10) a release, waiver, or limitation of any
104 right under § 506(c); or

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105 (11) the granting of a lien on any claim or
106 cause of action arising under §§ 544, 545, 547, 548, 549,
107 553(b), 723(a), or 724(a).

108 (C) Service. The motion shall be served on:
109 (1) any committee elected under § 705 or appointed under
110 § 1102 of the Code, or its authorized agent, or, if the case is
111 a chapter 9 municipality case or a chapter 11 reorganization
112 case and no committee of unsecured creditors has been
113 appointed under § 1102, on the creditors included on the list
114 filed under Rule 1007(d); and (2) on any other entity that the
115 court directs.

116 * * * * *

117 (d) AGREEMENT RELATING TO RELIEF FROM
118 THE AUTOMATIC STAY, PROHIBITING OR
119 CONDITIONING THE USE, SALE, OR LEASE OF
120 PROPERTY, PROVIDING ADEQUATE PROTECTION,

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121 USE OF CASH COLLATERAL, AND OBTAINING
122 CREDIT.

123 (1) *Motion; Service.*

124 (A) Motion. A motion for approval of an
125 ~~agreement~~ any of the following shall be accompanied by a
126 copy of the agreement and a proposed form of order:

127 (A) (1) an agreement to provide adequate
128 protection; ;

129 (B) (2) an agreement to prohibit or condition
130 the use, sale, or lease of property; ;

131 (C) (3) an agreement to modify or terminate
132 the stay provided for in § 362; ;

133 (D) (4) an agreement to use cash collateral; ;

134 or

135 (E) (5) an agreement between the debtor and
136 an entity that has a lien or interest in property of the estate
137 pursuant to which the entity consents to the creation of a lien

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138 senior or equal to the entity's lien or interest in such property:
139 ~~shall be served on any committee elected pursuant to § 705 or~~
140 ~~appointed pursuant to § 1102 of the Code or its authorized~~
141 ~~agent, or, if the case is a chapter 9 municipality case or a~~
142 ~~chapter 11 reorganization case and no committee of unsecured~~
143 ~~creditors has been appointed pursuant to § 1102, on the~~
144 ~~creditors included on the list filed pursuant to Rule 1007(d);~~
145 ~~and on such other entities as the court may direct. The motion~~
146 ~~shall be accompanied by a copy of the agreement and a~~
147 ~~proposed form of order.~~

148 (B) Contents. The motion shall consist of or (if
149 the motion is more than five pages in length) begin with a
150 concise statement of the relief requested, not to exceed five
151 pages, that lists or summarizes, and sets out the location
152 within the relevant documents of, all material provisions of
153 the agreement. In addition, the concise statement shall briefly
154 list or summarize, and identify the specific location of, each

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155 provision in the proposed form of order, agreement, or other
156 document of the type listed in subdivision (c)(1)(B). The
157 motion shall also describe the nature and extent of each such
158 provision.

159 (C) Service. The motion shall be served on:

160 (1) any committee elected under § 705 or appointed under
161 § 1102 of the Code, or its authorized agent, or, if the case is
162 a chapter 9 municipality case or a chapter 11 reorganization
163 case and no committee of unsecured creditors has been
164 appointed under § 1102, on the creditors included on the list
165 filed under Rule 1007(d); and (2) on any other entity the court
166 directs.

167 * * * * *

COMMITTEE NOTE

The rule is amended to require that parties seeking authority to use cash collateral, to obtain credit, and to obtain approval of agreements to provide adequate protection, modify or terminate the stay, or to grant a senior or equal lien on property, submit with those requests a proposed order granting the relief, and that they provide

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more extensive notice to interested parties of a number of specified terms. The motion must either not exceed five pages in length, or, if it is longer, begin with a concise statement of five pages or less, that summarizes or lists the material provisions and which will assist the court and interested parties in understanding the nature of the relief requested. The concise statement must also set out the location within the documents of the summarized or listed provisions. The parties to agreements and lending offers frequently have concise summaries of their transactions that contain a list of the material provisions of the agreements, even if the agreements themselves are very lengthy. A similar summary should allow the court and interested parties to understand the relief requested.

In addition to the concise statement, the rule requires that motions under subdivisions (c) and (d) state whether the movant is seeking approval of any of the provisions listed in subdivision (c)(1)(B), and where those provisions are located in the documents. The rule is intended to enhance the ability of the court and interested parties to find and evaluate those provisions.

The rule also provides that any motion for authority to obtain credit must identify any provision listed in subdivision (c)(1)(B)(1)-(11) that is proposed to remain effective if the court grants the motion on an interim basis under Rule 4001(c)(2), but later denies final relief.

Other amendments are stylistic.

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Changes Made After Publication:

1. The introductory language in subdivisions (b)(1)(B), (c)(1)(B), and (d)(1)(B) was revised to clarify that the motions filed under the rule can be either no more than five pages long or begin with a concise statement of that length. This permits the continued use of forms that have been effective in smaller cases. Subdivision (c)(1)(B) also is amended to require that the motion identify any provisionally approved term that would remain in effect even if the court denies the permanent relief requested.
2. A new subparagraph (c)(1)(B)(6) was inserted into the rule and the remaining subparagraphs were renumbered accordingly. The new subparagraph requires that the motion identify any provisions setting deadlines for filing and confirming reorganization plans and disclosure statements.
3. Subdivisions (c)(1)(C) and (d)(1)(C) of the proposed rule were deleted as unnecessary. The court has whatever authority Rule 9024 provides, and making an explicit reference to that rule in these subdivisions brings unnecessary attention to Rule 9024 and could create a different standard of review under that rule than would apply in other instances. The Advisory Committee did not intend either consequence, so the subdivisions were deleted.
4. Subdivision (d)(1)(A) was restyled to form a vertical list of the motions subject to that provision.

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Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case—Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts

1 Except to the extent that relief is necessary to avoid
2 immediate and irreparable harm, the court shall not, within 20
3 days after the filing of the petition, grant relief regarding the
4 following:

5 (a) an application under Rule 2014;

6 (b) a motion to use, sell, lease, or otherwise incur an
7 obligation regarding property of the estate, including a motion
8 to pay all or part of a claim that arose before the filing of the
9 petition, but not a motion under Rule 4001; and

10 (c) a motion to assume or assign an executory contract or
11 unexpired lease in accordance with § 365.

COMMITTEE NOTE

There can be a flurry of activity during the first days of a bankruptcy case. This activity frequently takes place prior to the formation of a creditors' committee, and it also can include

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substantial amounts of materials for the court and parties in interest to review and evaluate. This rule is intended to alleviate some of the time pressures present at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The rule provides that the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume or assign executory contracts and unexpired leases for the first 20 days of the case, unless granting relief is necessary to avoid immediate and irreparable harm. This standard is taken from Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of this provision.

This rule does not govern motions and applications made more than 20 days after the filing of the petition.

* * * * *

Changes After Publication:

Subdivision (c) was amended by deleting the reference to the rejection of executory contracts or unexpired leases. The rule, as revised, now limits only the assumption or assignment of executory contracts or unexpired leases in that subdivision.

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Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease

* * * * *

(e) LIMITATIONS. The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless: (1) all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee; (2) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (3) the court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one motion.

(f) OMNIBUS MOTIONS. A motion to reject or, if permitted under subdivision (e), a motion to assume or assign

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15 multiple executory contracts or unexpired leases that are not
16 between the same parties shall:

17 (1) state in a conspicuous place that parties receiving
18 the omnibus motion should locate their names and their
19 contracts or leases listed in the motion;

20 (2) list parties alphabetically and identify the
21 corresponding contract or lease;

22 (3) specify the terms, including the curing of defaults,
23 for each requested assumption or assignment;

24 (4) specify the terms, including the identity of each
25 assignee and the adequate assurance of future performance by
26 each assignee, for each requested assignment;

27 (5) be numbered consecutively with other omnibus
28 motions to assume, assign, or reject executory contracts or
29 unexpired leases; and

30 (6) be limited to no more than 100 executory
31 contracts or unexpired leases.

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32 (g) FINALITY OF DETERMINATION. The finality of
33 any order respecting an executory contract or unexpired lease
34 included in an omnibus motion shall be determined as though
35 such contract or lease had been the subject of a separate
36 motion.

COMMITTEE NOTE

The rule is amended to authorize the use of omnibus motions to reject multiple executory contracts and unexpired leases. In some cases there may be numerous executory contracts and unexpired leases, and this rule permits the combining of up to one hundred of these contracts and leases in a single motion to initiate the contested matter.

The rule also is amended to authorize the use of a single motion to assume or assign executory contracts and unexpired leases (i) when such contracts and leases are with a single nondebtor party, (ii) when such contracts and leases are being assigned to the same assignee, (iii) when the trustee proposes to assume, but not assign to more than one assignee, real property leases, or (iv) the court authorizes the filing of a joint motion to assume or to assume and assign executory contracts and unexpired leases under other circumstances that are not specifically recognized in the rule.

An omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, unless the court orders otherwise. These requirements are intended to ensure

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that the nondebtor parties to the contracts and leases receive effective notice of the motion. Among those requirements is the requirement in subdivision (f)(5) that these motions be consecutively numbered (e.g., Debtor in Possession's First Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, Debtor in Possession's Second Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, etc.). There may be a need for several of these motions in a particular case. Numbering the motions consecutively is essential to keep track of these motions on the court's docket and should avoid confusion that might otherwise result from similar or identically-titled motions.

Subdivision (g) of the rule provides that the finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other contracts or leases included in the omnibus motion to obtain appellate review of the order. The rule permits the listing of multiple contracts or leases for convenience, and that convenience should not impede timely review of the court's decision with respect to each contract or lease.

* * * * *

Changes After Publication:

Subdivision (e) of the proposed rule was amended as suggested by the NBC to insert a third category of requests that the trustee may make under an omnibus motion. The list of categories was numbered, and the new category is set out in (e)(2).

Rule 7007.1. Corporate Ownership Statement

1

2

COMMITTEE NOTE

The rule is amended to clarify that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding. The party's initial filing may be a document that is not a "pleading" as defined in Rule 7 F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7007. The amendment also brings Rule 7007.1 more closely in line with Rule 7.1 F. R. Civ. P.

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Changes After Publication:

No changes were made after publication.

Rule 9005.1. Constitutional Challenge to a Statute — Notice, Certification, and Intervention

- 1 Rule 5.1 F. R. Civ. P. applies in cases under the Code.

COMMITTEE NOTE

The rule is added to adopt the new rule added to the Federal Rules of Civil Procedure. The new Civil Rule replaces Rule 24(c) F. R. Civ. P., so the cross reference to Civil Rule 24 contained in Rule 7024 is no longer sufficient to bring the provisions of new Civil Rule 5.1 into adversary proceedings. This rule also makes Civil Rule 5.1 applicable to all contested matters and other proceedings within the bankruptcy case.

* * * * *

Changes After Publication:

No changes were made after publication.

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Rule 9037. Privacy Protection For Filings Made with the Court

1 (a) REDACTED FILINGS. Unless the court orders
2 otherwise, in an electronic or paper filing made with the court
3 that contains an individual's social-security number, taxpayer-
4 identification number, or birth date, the name of an
5 individual, other than the debtor, known to be and identified
6 as a minor, or a financial-account number, a party or
7 nonparty making the filing may include only:

8 (1) the last four digits of the social-security number
9 and taxpayer-identification number;

10 (2) the year of the individual's birth;

11 (3) the minor's initials; and

12 (4) the last four digits of the financial-account
13 number.

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14 (b) EXEMPTIONS FROM THE REDACTION
15 REQUIREMENT. The redaction requirement does not apply
16 to the following:

17 (1) a financial-account number that identifies the
18 property allegedly subject to forfeiture in a forfeiture
19 proceeding

20 (2) the record of an administrative or agency
21 proceeding unless filed with a proof of claim;

22 (3) the official record of a state-court proceeding;

23 (4) the record of a court or tribunal, if that record
24 was not subject to the redaction requirement when originally
25 filed;

26 (5) a filing covered by subdivision (c) of this rule;
27 and

28 (6) a filing that is subject to § 110 of the Code.

29 (c) FILINGS MADE UNDER SEAL. The court may
30 order that a filing be made under seal without redaction. The

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31 court may later unseal the filing or order the entity that made
32 the filing to file a redacted version for the public record.

33 (d) PROTECTIVE ORDERS. For cause, the court may
34 by order in a case under the Code:

35 (1) require redaction of additional information; or

36 (2) limit or prohibit a nonparty's remote electronic
37 access to a document filed with the court.

38 (e) OPTION FOR ADDITIONAL UNREDACTED
39 FILING UNDER SEAL. An entity making a redacted filing
40 may also file an unredacted copy under seal. The court must
41 retain the unredacted copy as part of the record.

42 (f) OPTION FOR FILING A REFERENCE LIST. A
43 filing that contains redacted information may be filed together
44 with a reference list that identifies each item of redacted
45 information and specifies an appropriate identifier that
46 uniquely corresponds to each item listed. The list must be
47 filed under seal and may be amended as of right. Any

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48 reference in the case to a listed identifier will be construed to
49 refer to the corresponding item of information.

50 (g) WAIVER OF PROTECTION OF IDENTIFIERS.

51 An entity waives the protection of subdivision (a) as to the
52 entity's own information by filing it without redaction and not
53 under seal.

COMMITTEE NOTE

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form, but the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. *See* <http://www.privacy.uscourts.gov/Policy.htm>. The Judicial Conference policy is that documents in case files generally should be made

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available electronically to the same extent they are available at the courthouse, provided that certain “personal data identifiers” are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social-security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver’s license numbers and alien registration numbers — in a particular case. In such cases, protection may be sought under subdivision (c) or (d). Moreover, the rule does not affect the protection available under other rules, such as Rules 16 and 26(c) of the Federal Rules of Civil Procedure, or under other sources of protective authority.

Any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should therefore notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

An individual debtor’s full social-security number or taxpayer-identification number is included on the notice of the § 341 meeting of creditors sent to creditors. Of course, that is not filed with the court, see Rule 1007(f) (the debtor “submits” this information), and the copy of the notice that is filed with the court does not include the full social-security number or taxpayer-identification number. Thus, since the full social-security number or taxpayer-identification number is not filed with the court, it is not available to a person searching that record.

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The clerk is not required to review documents filed with the court for compliance with this rule. As subdivision (a) recognizes, the responsibility to redact filings rests with counsel, parties, and others who make filings with the court.

Subdivision (d) recognizes the court's inherent authority to issue a protective order to prevent remote access to private or sensitive information and to require redaction of material in addition to that which would be redacted under subdivision (a) of the rule. These orders may be issued whenever necessary either by the court on its own motion, or on motion of a party in interest.

Subdivision (e) allows an entity that makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (f) allows the option to file a reference list of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

In accordance with the E-Government Act, subdivision (f) of the rule refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (g) allows an entity to waive the protections of the rule as to that entity's own information by filing it in unredacted form. An entity may elect to waive the protection if, for example, it is determined that the costs of redaction outweigh the benefits to privacy. As to financial account numbers, the instructions to Schedules E and F of Official Form 6 note that the debtor may elect to include the complete account number on those schedules rather than limit the number to the final four digits. Including the complete

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number would operate as a waiver by the debtor under subdivision (g) as to the full information that the debtor set out on those schedules.

The waiver operates only to the extent of the information that the entity filed without redaction. If an entity files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 9037 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with this rule if and when they are filed as part of an appeal or for other reasons.

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Changes After Publication:

Rule 9037 is intended to parallel as closely as possible Civil Rule 5.2 and Criminal Rule 49.1. The Advisory Committees have worked together to maintain as much consistency as possible in the three versions of the rule. The rule has been revised to implement the several style revisions suggested by the Style Subcommittee of the Standing Committee. Subdivision (b) was reorganized and renumbered. Subdivisions (b)(1) and (b)(3) were added in response to suggestions by the Department of Justice. Subdivision (b)(4), formerly subdivision (b)(2), was amended in response to the suggestion of the Committee on Court Administration and Case Management so that the subdivision now refers to court records that become a part of the record in the pending matter. The term “entity” has been substituted for “person” in subdivision (c) and for “party” in subdivisions (e) and (f) to conform the rule to the definitions provided in the Bankruptcy Code.

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